STATE OF MICHIGAN

COURT OF APPEALS

DEREK JUNTUNEN, GERALD JUNTUNEN, and SHARON JUNTUNEN,	UNPUBLISHED May 29, 2003
Plaintiffs-Appellees,	
v	No. 240266 Houghton Circuit Court
BLUE CROSS BLUE SHIELD OF MICHIGAN,	LC No. 98-010679-CK
Defendant-Appellant.	

Before: Smolenski, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Defendant Blue Cross Blue Shield of Michigan appeals by leave granted from a denial of summary disposition under MCR 2.116(C)(4). Plaintiffs Gerald and Sharon Juntunen and their son, Derek, filed a complaint against defendant alleging counts of intentional infliction of emotional distress, tortious interference with contract, and a violation of the Michigan Consumer Protection Act, MCL 445.901, *et seq*., for their receipt of an erroneous letter from defendant stating that plaintiffs had nearly exhausted Derek's insurance coverage. Defendant moved for summary disposition under MCR 2.116(C)(4), contending plaintiffs' claims were preempted by a provision of the Employee Retirement Income Security Act (ERISA). 29 USC 1144(a). The trial court denied summary disposition, and defendant now appeals. We reverse.

In August 1990, ten-year-old Derek Juntunen suffered an accidental gunshot wound to his neck, which left him a C-2 quadriplegic, dependent on a ventilator for breathing. Derek was at all pertinent times insured through each of his parents' separate health care insurance policies. Gerald's employment provided insurance to Derek through the Michigan Carpenter's Health Care Fund, which was administered by defendant. Derek was also covered under a separate insurance policy issued by defendant as a benefit of Sharon's employment.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *De Sanchez v Dep't of Mental Health*, 467 Mich 231, 235; 651 NW2d 59 (2002). "When reviewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show there was no genuine issue of material fact." *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000).

Section 514(a) of ERISA, 29 USC 1144(a), preempts "any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan described in section 4(a) [29 USC 1003(a)] and not exempt under section 4(b) [29 USC 1003(b)]" (emphasis added). Both insurance plans in the instant case are employee benefit plans under ERISA. 29 USC 1002(1). "In deciding whether a federal law pre-empts a state statute, our task is to ascertain Congress' intent in enacting the federal statute at issue." *Shaw v Delta Air Lines, Inc*, 463 US 85, 95; 103 S Ct 2890; 77 L Ed 2d 490 (1983). In determining Congressional intent regarding ERISA preemption, the *Shaw* Court noted that

> Congress used the words "relate to" in § 514(a) in their broadest sense. To interpret § 514(a) to preempt only state laws specifically designed to affect employee benefit plans would be to ignore the remainder of § 514. It would have been unnecessary to exempt generally applicable state criminal statutes from pre-emption in § 514(b), for example, if § 514(a) applied only to state laws dealing specifically with ERISA plans. [*Shaw*, *supra* at 98.]

"A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Id*. at 96-97. Thus, the issue this Court must decide is whether the laws underlying plaintiffs' claims "'relate to' employee benefit plans within the meaning of § 514(a) . . . and, if so, whether any exception in ERISA saves them from pre-emption." *Shaw*, *supra* at 96. To determine whether a state law has a relevant connection, "[w]e simply must go beyond the unhelpful text and the frustrating difficulty of defining its key term, and look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive," *New York State Conference of Blue Cross Blue Shield Plans v Travelers Ins Co*, 514 US 645, 656; 115 S Ct 1671; 131 L Ed 2d 695 (1995), "as well as to the nature of the effect of the state law on ERISA plans." *California Div of Labor Standards Enforcement v Dillingham Constr, NA, Inc*, 519 US 316, 326; 117 S Ct 832; 136 L Ed 2d 791 (1997).

In *Brinker v Michigan Bell Tel Co*, 152 Mich App 729; 394 NW2d 88 (1986), this Court concluded that the plaintiffs'

> state common-law claims are preempted by ERISA. Plaintiffs' complaint states causes of action for breach of contract, misrepresentation, fraud, deception, and improper inducement. Although plaintiffs' claims are technically based upon Michigan common law, even a state's general common law is considered preempted by ERISA if "state common law is being relied upon to resolve a dispute over the litigants' rights and obligations that have their genesis in an employee benefit plan." [*Id*. at 732, citing *Hollenback v Falstaff Brewing Corp*, 605 F Supp 421, 429 (ED Mo, 1984).]

Notably, the plaintiffs in *Brinker*, *supra* at 730, were not seeking benefits to which they were entitled under the Supplemental Income Protection Plan (SIPP); rather they were seeking damages for misrepresentations made by the defendant regarding the SIPP. The present plaintiffs, like the plaintiffs in *Brinker*, *supra* at 730, are not seeking benefits denied under defendant's insurance policy; rather, they are seeking damages caused by defendant's alleged breach of contract, tortious interference, and misrepresentation. In *Brinker*, *supra* at 732-733, all

the common law causes of action pleaded by the plaintiffs were intimately connected to the defendant's administration of the SIPP and the plaintiffs' receipt of pension benefits. Similarly, in the instant case, plaintiffs' claims arise out of defendant's administration of the two insurance policies. The basis of plaintiffs' claims, the erroneous letter informing them coverage was nearly depleted, was a direct consequence of defendant's administration of the plans. Therefore, plaintiffs' common law claims against defendant are preempted by ERISA.[1] Likewise, the same analysis applies to plaintiff's MCPA claim.

We conclude that the trial court erred by denying defendant's motion for summary disposition under MCR 2.116(C)(4).

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Richard Allen Griffin
/s/ Peter D. O'Connell

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[1] In *Caffey v UNUM Life Ins Co*, 302 F3d 576 (2002), the Sixth Circuit rejected the present plaintiffs' argument that state-law claims are not preempted by ERISA:

> [W]e agree with the district court's conclusion that plaintiff's state-law claims are preempted by ERISA. All of plaintiff's state-law claims stem from the actions of UNUM in the processing of her claim for benefits. It is well established that such state-law tort and contract claims are preempted by ERISA. See *Pilot Life Ins Co* [*v Dedeaux*,] 481 US [41,] 57[;] [107 S Ct 1549; 95 L Ed 2d 39 (1987)] (state-law bad-faith claim preempted); *Tolton v American Biodyne, Inc*, 48 F3d 937, 942 (CA 6, 1995) . . . . In its most recent pronouncement on the subject, the Supreme Court again confirmed that any state law "providing a form of ultimate relief in a judicial forum that adds to the judicial remedies provided by ERISA . . . patently violates ERISA's policy of inducing employers to offer benefits by assuring a predictable set of liabilities, under uniform standards of primary conduct and a uniform regime of ultimate remedial orders and awards when a violation has occurred." *Rush Prudential HMO, Inc v Moran*, 536 US 355, ____; 122 S Ct 2151, 2166; 153 L Ed 2d 375 (2002). Indisputably, plaintiffs' state-law tort and contract claims seek judicial remedies for UNUM's failure to abide by the terms of the Plan beyond what is provided in ERISA. We therefore affirm the district court's dismissal of Caffey's state-law claims. [Citation omitted.]